



## DSS ADMINISTRATIVE LETTER NO. PFS-1-87

**TO:** County Directors of Social Services

**DATE:** December 16, 1987

**RE:** COUNTY DEPARTMENT OF SOCIAL SERVICES' AUTHORITY  
REGARDING **WILLIE M.** CLASS MEMBERS

The purpose of this letter is to rescind DSS Administrative Letter No. FS-1-84 and to provide you with current guidance. The content of this guidance has been developed in collaboration with the Division of Mental Health, Mental Retardation and Substance Abuse Services (**Willie M.** office) and with the Attorney General's staff.

Initially, a county department of social services can nominate a child for consideration as a potential **Willie M.** class member by submitting the form entitled "Identification of Potential Class Member" by mail to the **Willie M.** program state office with a copy to the local mental health center. (See Attachment A.) Once preliminary screening has been completed, however, and the child has been accepted as a potential **Willie M.** class member, the consent of the child's parent or guardian is required for the form entitled "Consent for Release of Information and Authorization for Comprehensive Evaluation". (See Attachment B.) Consent can be given by a county department of social services when: (1) the county department of social services has been vested with parental rights by a general consent to the adoption or termination of parental laws; or (2) the county department of social services is expressly authorized to do so by court order; or (3) the county department of social services has written parental authorization. (See Attachments C, D and E. ) This is because participation by a juvenile in the federal court-related **Willie M.** program affects the juvenile's legal rights and identifies him as mentally, emotionally, and/or neurologically impaired and as violent or assaultive.

In clarifying the above, we are advising you that unless you have been vested with parental rights by a general consent to the adoption or the termination of parental rights laws, it is best to have a parent or guardian sign the "Consent for Release of Information and Authorization for Comprehensive Evaluation" form. Where this cannot reasonably be done, we advise you to obtain a court order or written parental authorization to consent before signing the "Consent for Release of Information and Authorization for Comprehensive Evaluation" form on behalf of a juvenile in your custody. Parental authorizations can be obtained in the course of regular casework with the family. Court orders can be obtained as part of ordinary reviews, unless you think it

is wise to move more quickly. Court orders will usually be better than parental authorization for a county department to consent.

After a child has been certified as a **Willie M.** class member, a county department of social services can act on his behalf pursuant to the provision of G.S.7A-647(2)c and the mental health statute, G.S.122C-3(20) (ii) , which defines “legally responsible person” to include a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care including psychiatric treatment.

Even in light of G.S.7A-647(2)c, which provides that “if a juvenile’s parent or guardian is unknown, unavailable, or unable to act on his behalf, a county department of social services can arrange for, provide, or consent to psychiatric, psychological, educational, or other remedial evaluations or treatment for a juvenile in its custody or physical custody,” a county department must first make reasonable efforts to obtain consent from the child's parent or guardian and document the efforts in the case file. If, after making such efforts, a county department determines that the child's parent or guardian is unknown, unavailable, or unable to act on his behalf, it can then act on his behalf. The county department of social services must promptly notify the child’s parent or guardian that care or treatment has been provided, give him frequent status reports on the circumstances of the child, and upon the parent or guardian's request, make available to him the results or records of any evaluations, findings, or treatment regarding the child. If the parents' whereabouts are unknown, the county department must document its efforts to provide this information. If a parent or guardian refuses to give his consent for care or treatment, however, when contacted by a county department of social services as required by G.S.7A-647(2)c, the only prudent course of action for a county department to follow is to seek a court order for such care or treatment. (See Attachments F and G.)

If a **Willie M.** child requires educational testing and services and an individual educational plan, the basic conclusion reached in an Attorney General's opinion dated March 12, 1986 is that due to other specific State and federal laws and regulations, a county department of social services does not have the authority to arrange for, provide, or consent to educational evaluations or treatment for a handicapped child (i.e., a child with special needs as defined in G.S.115C-109) in its custody or physical custody. Such is the case even if the department of social services has been vested with parental rights by a general consent to adoption or under the termination of parental rights laws, or his parent or guardian is unknown, unavailable, or unable to act on his behalf. Therefore, if a **Willie M.** child is also identified as a child with special needs, a surrogate parent must be appointed for him pursuant to G.S.115C-116(a). See also, a Dear County Director of Social Services Letter dated November 21, 1984, on the subject of surrogate parents.

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For your convenience, we have attached copies of the current "Identification of Potential Class Member" and "Consent for Release of Information and Authorization for Comprehensive Evaluation" forms that are referenced elsewhere in this letter. Additional copies of these forms may be obtained from your Mental Health Center. We have also attached model pleadings and orders and model parental consents prepared by the Attorney General's Office which you can use for future consents. The Child Welfare Attorneys in the Regional offices are available to provide further explanation of the legal issues that prompt this guidance, and to consult with you about use of the models and, as appropriate, about individual cases.

If you have questions, you may contact Joan Holland, Chief of Family Services Section, who is our Division liaison with the Department's Interagency Committee on **Willie M.**, or Sue Glasby, Head of Children's Services Branch.

Sincerely,

Mary K. Deyampert

MKD:WR:md  
Attachments